IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.504 of 2005

IN

A.O.NO.455 of OF 2005

The Indian Power Lifting Federation & Ors. .. Appellants

vs.

Mrs. Salara Balkrishna Shetty & Ors. .. Respondents.

Mr.Anjani Kumar Singh for the Appellant.

Mr.Shripad Murthy for the Respondent.

CORAM : A.S.OKA, J.

DATED : 12th April, 2005.

P.C. :

1. Rule. Respondent No.1 waives service. Heard Counsel appearing for the parties. By the impugned Judgment and Order, Notice of Motion No. 2865 of 2003 taken out by the Original Plaintiff-Respondent No.1 has been made absolute in terms of prayer clause (a) and (b). The said prayer (a) and (b) read thus :

> a. Pending the hearing and final disposal of the suit, the suspension order

vide letters dated 5.6.2003 and 27.6.2003 and further enquiry letter dated 6.7.2003 issued by the defendant No.3 be stayed and in the alternative.

b. The defendants be directed by order of injunction of this Court to allow and/or permit the plaintiff to participate in the National, Asian and World Championships to be held hereafter in power lifting competitions respectively.

2. Without disputing the fact that the order of suspension passed against the Respondent No.1 will come to an end on 2.5.2005, the learned Counsel for the Applicant submits that the impugned judgment and order is required to be stayed as the same is passed without hearing the Original Defendant Nos.7 and 8 and without serving notice on Respondent Nos.7 and 8. He submits that the earlier two orders passed by this Court were obtained without notice to the applicant. He therefore submits that the stay deserves to be granted.

3. The learned Counsel for the Respondent No.1 submitted that the Original Defendant Nos.7 and 8

have been duly served with the Notice. The learned Counsel further pointed out that no enquiry has been held as yet on the basis of communication dated 6.7.2003 (exhibit I) to the plaint.

4. I have considered the rival submissions. Admittedly, the order of suspension passed against the Respondent No.1 by the Respondent No.3 will come to an end on 2.5.2005. By order dated 18.8.2003 passed in Civil Application No.890 of 2003 in Appeal from order No.591 of 2003, this Court partly stayed the order of suspension by permitting the Original Plaintiff to participate in the event which was scheduled to be held at Mangalore in August 2003. There is one more order dated 16.2.2004 passed by this Court in Civil Application No.311 of 2004 by which the order of suspension passed against the Respondent No.1 was stayed and the original plaintiff was permitted to participate in Power Lifting Federation Cup Championship which was to be held in February 2004.

5. Reliance is placed by the learned Counsel for the Applicant on order dated 24.6.2004 by which the Appeal from Order No.591 of 2003 was dismissed on account of negligence on the part of Original

Plaintiff. The said order is of no consequence as the order impugned in the said Appeal from Order was an ad-interim order passed during the pendency of the Notice of Motion.

6. Considering the prima facie findings recorded by the learned trial Judge, no case is made out for stay of the execution and operation of the impugned judgment and order. The grievance regarding non service of Notice on the Defendant Nos.7 and 8 cannot be made by the Appellant and it is for the concerned Respondents to make grievance, if any.

7. Hence prayer for grant of stay is rejected. It is however, clarified that if the Respondent No.1 participating in any event or competition and if it is necessary and mandatory under the rules, the respondent NO.1 will have to undergo dope test.

8. Subject to the above observations, application stands rejected.

9. At this stage, the learned counsel for the Applicant prays for stay of execution of this order. The prayer is rejected.

(A.S. Oka,J.)